

Friday, September 7, 2007

House Meets At...	Votes Predicted At...
9:00 a.m. For Legislative Business	Last Vote: 2:00-3:00 p.m.
Five "One-Minutes" Per Side	

Any anticipated Member absences for votes this week should be reported to the Office of the Majority Whip at 226-3210.

Floor Schedule and Procedure

- **H. Res. 636—Rule providing for consideration of H.R. 1908 – Patent Reform Act of 2007 (Rep. Welch—Rules):** The structured rule provides one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. The rule provides that the amendment in the nature of a substitute recommended by the Committee on the Judiciary, now printed in the bill, shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule makes in order only those amendments printed in the Rules Committee report accompanying the resolution. The rule provides one motion to recommit with or without instructions. Debate on the rule will be managed by Rep. Welch, and consideration will proceed as follows:
 - One hour of debate on the rule.
 - Possible vote on a Democratic motion to move the previous question. **Democrats are urged to vote yes on the motion.**
 - Vote on adoption of the rule. **Democrats are urged to vote yes on adoption of the rule**
- **H. Res. 637—Rule providing for consideration of the Conference Report to Accompany H.R. 2669 - College Cost Reduction and Access Act (Rep. Sutton—Rules):** The rule provides for one hour of debate on the conference report to be divided between the Chairman and ranking minority member of the Education and Labor Committee. Debate on the rule will be managed by Rep. Sutton, and consideration will proceed as follows:
 - One hour of debate on the rule.
 - Possible vote on a Democratic motion to move the previous question. **Democrats are urged to vote yes on the motion.**
 - Vote on adoption of the rule. **Democrats are urged to vote yes on adoption of the rule**

- **Conference Report to Accompany H.R. 2669 - College Cost Reduction and Access Act (Rep. George Miller-Education and Labor):** Pursuant to the rule, debate on the conference report will be managed by Education and Labor Committee Chair Rep. George Miller, or his designee, and will proceed in the following order:
 - One hour of debate on the conference report.
 - Vote on adoption of the conference report. **Democrats are urged to vote yes on adoption of the conference report.**
- **H.R. 1908 – Patent Reform Act of 2007(Rep. Berman-Judiciary):** Pursuant to the rule, debate on the bill will be managed by Judiciary Committee Chair Rep. John Conyers, or his designee, and will proceed in the following order:
 - One hour of debate on the bill.
 - Debate and votes on amendments to the bill.
 - Possible debate and vote on a Republican motion to recommit the bill.
 - Vote on passage of the bill. **Democrats are urged to vote yes on final passage.**

Bill Summary and Key Issues

Conference Report to Accompany H.R. 2669 - College Cost Reduction and Access Act

The College Cost Reduction and Access Act provides the **single largest investment in higher education since the GI bill**. With this bill, the Democratic Congress is delivering on our promise to make college more affordable and accessible for all qualified students. The legislation boosts college aid by roughly \$20 billion over the next five years. The legislation pays for itself by reducing excessive federal subsidies paid to lenders in the college loan industry thereby imposing no new cost to taxpayers. It also includes \$750 million in federal budget deficit reduction. The legislation will:

Strengthen the Middle Class by Making College More Affordable

- Cutting interest rates in half on subsidized student loans over the next four years.
- Making student loan payments more manageable for borrowers by guaranteeing that borrowers will not have to pay more than 15 percent of their discretionary income in loan repayments, and allowing borrowers in economic hardship to have their loans forgiven after 25 years.

Increase the Purchasing Power of the Pell Grant Scholarship

- Increasing the maximum Pell Grant scholarship by \$490 next year and at least \$1,090 over the next five years, ultimately reaching a maximum scholarship of at least \$5,400 by 2012.
- Expanding eligibility through needs analysis to include and serve more students with financial need.

Ensure a Highly Qualified Teacher in Every Classroom

- Providing upfront tuition assistance to qualified undergraduate students who commit to teaching in public schools in high-poverty communities or high-need subject areas.

Encourage and Reward Public Service

- Providing public servants loan forgiveness after 10 years of public service and loan repayment for military service members, first responders, law enforcement officers, firefighters, nurses, public defenders, prosecutors, early childhood educators, librarians, and others.

Make Historic New Investments in Minority-Serving Institutions

- Making a landmark new investment of \$510 million over five years in Historically Black Colleges and Universities, Hispanic-Serving Institutions, Tribal Colleges, Alaska Native and Native Hawaiian institutions, and the newly designated Predominantly Black Institutions and institutions serving Asian Americans and Pacific Islanders and Native American students – to ensure that students will not only enter college, but remain and graduate.

Encourage State and Philanthropic Participation in College Retention and Financing: Establishing a partnership among federal, state and local government entities and philanthropic organizations through matching challenge grants aimed at increasing the number of first generation and low-income college students.

H.R. 1908 – PATENT REFORM ACT OF 2007

Comprehensive Result of Bipartisan, Bicameral Efforts. The Patent Reform Act of 2007 (H.R. 1908) is the first comprehensive modernization and revision of the patent law in 55 years. The bill judiciously and prudently addresses those elements of current law which have been identified as needing reform to ensure that in the 21st Century our patent law continues to promote the progress of science and the useful arts as mandated by Article 1, Section 8 of the Constitution. It is the product of six years of work by the Judiciary Committee. Over those years the bill has undergone substantial changes to reflect developments in the marketplace and the law, and in response to specific concerns raised by Members of the Committee and other interested parties.

Right of the First Inventor to File. The Act converts the U.S. patent system from a first-to-invent system to a first-inventor-to file system. The U.S. is alone in granting priority to the first inventor as opposed to the first inventor to file a patent. The Act will inject needed clarity and certainty into the system. While cognizant of the enormity of the change that a “first inventor to file” system may have on many small inventors and universities, a grace period is maintained to substantially reduce the negative impact to these inventors.

New Formula for Calculating Fair and Equitable Remedies. This section provides much needed guidance to courts and juries to ensure inventors are compensated fairly, while not discouraging innovation with excessive damage awards. While preserving the right of patent owners to receive appropriate

damages, the bill provides optional methods to ensure that the patent owner is rewarded for the actual value of the patented invention.

Willful infringement. HR 1908 contains certain limitations on willful infringement requiring the patent owner to show. This section provides that a court may only find willful infringement if the patent owner shows, by clear and convincing evidence, that (1) the infringer, after receiving detailed written notice from the patentee, performed the acts of infringement, (2) the infringer intentionally copied the patented invention with knowledge that it was patented, or (3) after having been found by a court to have infringed a patent, the infringer engaged in conduct that again infringed on the same patent. An allegation of willfulness is subject to a “good faith” defense.

Post-Grant Procedures And Other Quality Enhancements. H.R. 1908 cures the principal deficiencies of re-examination procedures and creates a new, post-grant review that provides an effective and efficient system for considering challenges to the validity of patents. Addressing concerns that a post-grant review procedure could be abused by one seeking to cancel a patent, this section establishes a single opportunity for challenge which must be initiated within 12 months of the patent being granted. It also requires the Director to prescribe rules for abuse of discovery or improper use of the proceeding, limits the types of prior art which may be considered, and prohibits a party from reasserting claims in court that it raised in post-grant review.

Submissions by Third Parties and Other Quality Enhancements. H.R. 1908 will improve patent quality by creating a mechanism for third parties with knowledge of the subject matter of a claimed invention to submit relevant information about prior art to the USPTO. The availability of additional information to the examiner will substantially enhance patent quality.

Venue and Jurisdiction. The bill also addresses changes to venue, to address extensive forum shopping and provides for interlocutory appeals to help clarify the claims of the inventions early in the litigation process. H.R. 1908 would restore balance to this statute by allowing cases to be brought in a variety of locales – including where the defendant is incorporated or has its principal place of business or where the plaintiff resides in certain instances. H.R. 1908 makes patent reform litigation more efficient by providing the Federal Circuit jurisdiction over interlocutory orders on claim construction by the district court.

Additional Information, Inequitable Conduct as Defense to Infringement. Inequitable conduct -- One costly part of patent litigation is the battle over “inequitable conduct” – whether the patent holder made misrepresentations while obtaining the patent which should make the patent unenforceable. H.R. 1908 establishes stringent standards both in pleading and proof for inequitable conduct as a defense to the infringement of a patent.

Regulatory Authority. This provision would clarify the authority of the PTO to make procedural rules where appropriate to limit abuses by applicants. Specifically, this amendment clarifies that the Office may make rules that ensure the quality and timeliness of the application process.

Anticipated Amendments to H.R. 1908

Conyers (MI)/Smith (TX)/Berman (CA)/Coble (NC): Manager's amendment. The amendment incorporates a number of revisions. They include revisions to the sections on damages, willful infringement, prior user rights, post-grant review, venue, inequitable conduct, applicant disclosure information, inventor's oath requirements, among others. (20 minutes)

Issa (CA): The bill eliminates provisions in the law permitting certain applicants to delay or prevent publication of their applications. This amendment would strike that provision and permit applicants to delay publication until the later of (1) three months after a second PTO decision or (2) 18 months after the filing date. (10 minutes)

Issa (CA): Amends the section relating to United States Patent and Trademark Office regulatory authority by adding the requirement that Congress be provided 60 days to review regulations before they take effect. Congress may bar implementation of the regulation by enactment of a joint resolution of disapproval. (10 minutes)

Jackson-Lee (TX): This amendment requires the Director of the United States Patent and Trademark Office to conduct a study of patent damage awards in cases from at least 1990 to the present where such awards have been based on a reasonable royalty under Section 284 of Title 35 of the United States Code. The Director the PTO would be required to submit the findings to Congress no later than one year after the Act's enactment. (10 minutes)

Pence (IN): Amends the provisions governing post-grant review proceedings to prohibit a post-grant review from being instituted based upon the best mode requirement of patent law. (10 minutes)

Quote of the Day

<p>"Where a new invention promises to be useful, it ought to be tried." -Thomas Jefferson</p>
